

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)

4)
5 MUR 6116)

6 TIMOTHY M. CUNHA)

7 TIM CUNHA FOR CONGRESS AND)

8 TIMOTHY M. CUNHA, AS TREASURER)
9

CASE CLOSURE UNDER THE

ENFORCEMENT PRIORITY SYSTEM

10
11 **GENERAL COUNSEL'S REPORT**

12 Under the Enforcement Priority System, matters that are low-rated

13 are

14 forwarded to the Commission with a recommendation for dismissal. The Commission has

15 determined that pursuing low-rated matters compared to other higher rated matters on the

16 Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

17 The Office of General Counsel scored MUR 6116 as a low-rated matter. The

18 complainant, Sean Walsh, claims that congressional candidate Timothy M. Cunha and his

19 campaign committee, Tim Cunha for Congress and Timothy M. Cunha, in his official capacity as

20 treasurer ("the Committee"), broadcast campaign advertisements that violated the Commission's

21 disclaimer provisions at 2 U.S.C. § 441d and 11 C.F.R. § 110.11. Specially, the complainant

22 asserts that the advertisements failed to include a clearly-identifiable photograph of the candidate

23 comprising at least 80% of the vertical screen height, as set forth in 11 C.F.R.

24 § 110.11(c)(3)(ii)(B). The complainant requests that the Commission have the advertisements

25 taken off the air immediately.¹

¹ Although the complainant advises that the advertisements could be viewed at www.timcunha.com, the staff was unable to find them on that website or elsewhere on the public record, nor did the complainant or the respondents provide us with copies of the advertisements.

1 In response, Mr. Cunha, replying on behalf of himself and his Committee, asserts that he
2 relied on the company that produced the advertisements to comply with both FCC and FEC
3 regulations. In addition, Mr. Cunha states that, upon learning of the complaint, he contacted
4 counsel at the television stations that broadcast his campaign advertisements. Noting that the
5 advertisements included "live" footage of himself for at least 4 seconds prior to the verbal and
6 written disclaimer (the adequacy of which the complainant does not raise), counsel believed,
7 according to Mr. Cunha, that he had provided viewers with the requisite notice of the identity of
8 the person or political committee that paid for the advertisements, as required by 11 C.F.R.
9 § 110.11(c)(1). Nonetheless, in order to avoid even the appearance of impropriety, Mr. Cunha
10 states that, upon being notified of the complaint, he immediately requested his television
11 production company to enlarge the image of himself accompanying the written and verbal
12 disclaimer to 80% of the screen height, which the production company reportedly accomplished
13 by the next business day.

14 It appears that the public would not have been misled as to who paid for the
15 advertisements and that a violation of 2 U.S.C. § 441d and 11 C.F.R. § 110.11, if any, was
16 technical in nature and unintentional. Thus, in furtherance of the Commission's priorities and
17 resources, relative to other matters pending on the Enforcement docket, the Office of General
18 Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss
19 the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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RECOMMENDATIONS


The Office of General Counsel recommends that the Commission dismiss
MUR 6116 as to Timothy M. Cunha, Tim Cunha for Congress and Timothy M. Cunha, in his
official capacity as treasurer, close the file, and approve the appropriate letters.

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Date

6/25/09

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